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Special Article - The History of Government in New South Wales

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INTRODUCTION

Although forms of Aboriginal tribal government had existed from time immemorial in NSW, government as we know it began in Australia when NSW became a British colony on 26 January 1788 and the British Government made the Governor, Captain Arthur Phillip, responsible for keeping law and order. He was entitled to grant land, raise armed forces for defence, discipline convicts and military personnel, and issue regulations and orders. As the colony grew, he could raise taxes through customs duties.

Law courts were established when the colony was founded, but, for the first 35 years, the Governors were absolute rulers. The British Parliament could control their authority, but England was 20,000 kilometres and eight months away by sea: by the time a complaint was heard and decided, nearly two years might have gone by. A growing number of colonists were not happy with total control in the hands of one person and urged the British Parliament to allow the colony to establish a legislature.

In 1823, the British Parliament passed an Act, usually called the 'New South Wales Act', which mainly dealt with the structure of the courts and the role of the judges. It also included a provision for 'His Majesty to constitute and appoint a Council, to consist of ... not exceeding seven and not less than five' members. The Governor, as the King's representative, appointed five Legislative Councillors. All of them were public officials and even though they had very little power as councillors, in their official positions they had considerable influence. The first Legislative Council met on 25 August, 1824.

In 1825, the number of Legislative Councillors was increased to seven. Also in 1825, Van Diemen's Land was separated from NSW. In 1828, all the laws in force in England at that time officially became the laws of NSW, whenever appropriate.

In 1829, Legislative Council numbers were again increased to 15. By now, the power of the Council was rivalling the power of the governors. In 1829 there were 36,598 people in NSW, over half of whom were convicts still serving their sentences.

The colonists had followed the path of political reform in England very closely and were keen for similar political reform in the Colony. They wanted to be able to elect their own representatives to the Legislative Council. After a great deal of lobbying, the British Parliament passed an Act in 1842 which allowed for 36 members of the Council; 12 were to be appointed by the Governor and 24 were to be elected by men who qualified by owning sufficient property. This was the first representative legislature in Australia.

The governors still had more power than the Council, because, if the Council passed a law with which they disagreed, they could dissolve the Council and refer the bill to the British Parliament. Governors were financially independent because they controlled the money raised from the sale of Crown land.

In 1850, the British Parliament passed the Australian Colonies Government Act. Under this Act, Victoria was formally separated from NSW in 1851. It also allowed the colonies to prepare constitutions for approval by the British Parliament. William Charles Wentworth, whose portrait may be seen in the Legislative Assembly Chamber, chaired two Select Committees which prepared the NSW Constitution Bill which passed through the British Parliament in 1855.

From 1856, under this Constitutional Statute, NSW gained a fully responsible system of government. The Legislative Assembly was made up of 54 elected members and the Legislative Council of no fewer than 21 members nominated by the Governor.

The Legislative Assembly was not fully representative because there were still property qualifications for voters. However, in 1858, the Electoral Reform Act gave NSW virtual manhood suffrage and secret ballot. This placed NSW among the world leaders in the introduction of parliamentary democracy. There were still two significant groups in the community who could not vote --- women and Aborigines. Women were granted the right to vote in NSW in 1902, but Aboriginal people had to wait for formal recognition until 1962.

Since 1856, the role of the Legislative Council has remained unchanged as an Upper House of review and a check on the Lower House where the government is formed. The form of the Legislative Council has occasionally been modified throughout its history particularly in 1978 when the Government of Neville Wran introduced a democratic franchise and the Upper House became a fully elected arm of the NSW legislature.

Responsible government changed the role of the Sovereign but did not replace it. Under the law, the British Parliament kept its overall authority, but it no longer interfered in colonial affairs.

CONSTITUTION

The Constitution of NSW is drawn from several diverse sources - certain Imperial Statutes, an element of inherited English law, certain Commonwealth and State Statutes, a large number of legal decisions, and a large amount of English and local convention.

For practical purposes, the Parliament of NSW may legislate for peace, welfare and good government of the State in all matters not specifically reserved to the Commonwealth Parliament.

THE GOVERNER

As the Queen's representative, the Governor has all the powers and functions of Her Majesty in respect to the State, with the exception of the power to appoint, and the power to terminate the appointment of, the Governor. Advice on the appointment and termination of the appointment of the Governor is tendered to Her Majesty by the Premier.

In addition to exercising Her Majesty's powers and functions in respect to the State, the Governor is titular head of the Government of NSW and performs the formal and ceremonial functions that attach to the Crown.

The Governor's more important duties are:

- to appoint the Executive Council and to preside at its meetings;
- to appoint the Premier and other ministers of the Crown for the State from among members of the Executive Council;
- to summon, prorogue and dissolve the Legislature;
- to assent to Bills passed by the Legislature;
- to remove and suspend Officers of the State; and
- to exercise the Queen's prerogative of mercy.

EXECUTIVE AGREEMENT

Executive government in NSW is based on the British system, known as Cabinet government. The essential condition is that Cabinet is responsible to Parliament. Its main principles are that the Head of State - the Governor - should perform governmental acts on the advice of the ministers. The Governor should choose the principal ministers from members of the party, or coalition of parties, commanding a majority in the Lower House of Parliament (the Legislative Assembly). The Ministry chosen should be collectively responsible to that House for the government of the State and should resign if it ceases to command the confidence of the House.

THE EXECUTIVE COUNCIL

All important actions of State are performed or sanctioned by the Governor-in-Council (the Executive Council). Invariably members of the Executive Council are members of the Ministry formed by the leader of the dominant party in the Legislative Assembly.

The Governor presides at the meetings of the Executive Council, or in his absence the Vice-President of the Council or the next most senior member. The quorum is two. The meetings are formal and official in character. At the meetings the decisions of the Cabinet are given legal form, appointments are made, resignations are accepted, proclamations are issued and regulations are approved.

THE MINISTRY OR CABINET

While the formal executive power is vested in the Governor, in practice the whole policy of a Ministry is determined by the ministers meeting, without the Governor, under the chair of the Premier. This group of ministers is known as the Cabinet.

The Ministry consists of those members of Parliament chosen to administer departments of State and to perform other executive functions. Most ministers come from the Legislative Assembly. The Constitution limits the numbers of ministers to 20. The Ministry is answerable to Parliament for its administration. It continues in office only as long as it commands the confidence of the Legislative Assembly. An adverse vote in the Legislative Council does not affect the life of the Ministry.

Table 3.1 Ministries of NSW since 1973

	Name of Premier and party	From	To
66	Askin (Liberal/Country Party)	17 Jan. 1973	3 Dec. 1973
67	Askin (Liberal/Country Party)	3 Dec. 1973	3 Jan. 1975
68	Lewis (Liberal/Country Party)	3 Jan. 1975	17 Dec. 1975
69	Lewis (Liberal/Country Party)	17 Dec. 1975	23 Jan. 1976
70	Willis (Liberal/Country Party)	23 Jan. 1976	14 May 1976
71	Wran (Labor)	14 May 1976	19 Oct. 1978
72	Wran (Labor)	19 Oct. 1978	29 Feb. 1980
73	Wran (Labor)	29 Feb. 1980	2 Oct. 1981
74	Wran (Labor)	2 Oct. 1981	1 Feb. 1983
75	Wran (Labor)	1 Feb. 1983	10 Feb. 1984
76	Wran (Labor)	10 Feb. 1984	5 Apr. 1984
77	Wran (Labor)	5 Apr. 1984	6 Feb. 1986
78	Wran (Labor)	6 Feb. 1986	4 July 1986
79	Unsworth (Labor)	4 July 1986	25 Mar. 1988
80	Greiner (Liberal/National Party)	25 Mar. 1988	6 June 1991
81	Greiner (Liberal/National Party)	6 June 1991	24 June 1992
82	Fahey (Liberal/National Party)	24 June 1992	4 Apr. 1995
83	Carr (Labor)	4 Apr. 1995	In office

THE LEGISLATURE

The State Legislature consists of the Sovereign and the two Houses of Parliament - the Legislative Council (the Upper House) and the Legislative Assembly (the Lower House).

All Bills for appropriating revenue or imposing taxation must originate in the Legislative Assembly; any other Bill may originate in either House.

Each member must take an oath or affirmation of allegiance and must declare his or her pecuniary or other interests. Disclosures are open to public inspection.

Both Houses must meet at least once a year. The Constitution (Fixed Term Parliaments) Amendment Act 1993 fixed the term of Parliament to four years and specified that 'A Legislative Assembly shall, unless sooner dissolved [by the Governor], expire on the Friday before the first Saturday in March in the fourth calendar year after the calendar year in which the return of the writs for choosing that Assembly occurred.'

The party system has become a dominant feature of Parliamentary government in NSW. Most members of Parliament belong to one of the three main parties - the Australian Labor Party, the

Table 3.2 Parliaments of NSW since 1965

	Return of writs	Date of opening	Date of dissolution	Duration			Number of sessions
				Years	Months	Days	
41	28 May 1965	26 May 1965	23 Jan. 1968	2	7	26	4
42	22 Mar. 1968	26 Mar. 1968	13 Jan. 1971	2	9	22	3
43	16 Mar. 1971	16 Mar. 1971	19 Oct. 1973	2	7	4	4
44	7 Dec. 1973	4 Dec. 1973	2 Apr. 1976	2	3	27	3
45	21 May 1976	25 May 1976	12 Sep. 1978	2	3	19	3
46	3 Nov. 1978	7 Nov. 1978	28 Aug. 1981	2	9	25	4
47	23 Oct. 1981	28 Oct. 1981	5 Mar. 1984	2	4	11	4
48	30 Apr. 1984	1 May 1984	22 Feb. 1988	3	9	21	3
49	22 Apr. 1988	27 Apr. 1988	3 May 1991	3	0	7	4
50	28 June 1991	2 July 1991	3 Mar. 1995	3	8	1	4
51	28 Apr. 1995	2 May 1995	In office				

THE LEGISLATIVE COUNCIL

The Legislative Council has 42 members, each elected for two terms of the Legislative Assembly. The term of office of 21 members expires at each general election, at which time 21 members are elected.

The executive officers of the Council are the President and the Chairman of Committees who are chosen by and from the members of the Council.

Table 3.3 Legislative Council: Membership by party affiliation

	Year of election				
	1981	1984	1988	1991	1995
A Better Future for Our Children	-	-	-	-	1
Australian Democrats	1	1	2	2	2
Australian Labor Party	24	24	21	18	17
Call to Australia Group	1	2	3	2	2
Liberal Party of Australia	12	11	12	13	12

National Party (a)	6	7	7	7	6
Shooters' Party	-	-	-	-	1
The Greens	-	-	-	-	1
Total	44	45	45	42	42

(a) Prior to 1982, the 'National Country Party'.

THE LEGISLATIVE ASSEMBLY

There are 99 members of the Legislative Assembly - one member per electorate - who are elected on a system of universal suffrage. The term of office is for a maximum of four years.

A Speaker presides over the House and the election for the position is the first business of the House after an election. The Speaker presides over debate, maintains order, represents the House officially, communicates its wishes and resolutions, defends its privileges when necessary and determines its procedure. There is also a Chairman of Committees elected by the House at the beginning of each Parliament. The Chairman presides over the deliberations of the House in Committee of the Whole and acts as Deputy Speaker.

Table 3.4 Legislative Assembly: Membership by party affiliation

	Year of election (a)				
	1981	1984	1988	1991	1995
Australian Labor Party	69	58	43	46	50
Independents	2	4	7	4	3
Liberal Party of Australia	14	22	39	32	29
National Party (b)	14	15	20	17	17
Total	99	99	109	99	99

(a) Does not include results of by-elections.

(b) Prior to 1982, the 'National Country Party'.

FRANCHISE

The elections of both Houses are conducted by secret ballot. Only Australian citizens resident in NSW who are 18 years of age or over are eligible to enrol to vote. British subjects who were on the roll on 26 January 1984 retain the right to vote. Enrolment and voting are compulsory.

OPTIONAL PREFERENTIAL VOTING

A member of the Legislative Assembly is elected by the optional preferential method of voting. Using this method, a voter is required to record a vote for one candidate only, but is permitted to record a vote for as many more candidates as desired, indicating the preferred order. In counting,

the candidate with an absolute majority of first preference votes is elected. If there is no such candidate, then the candidate with the lowest number of votes is eliminated and the votes cast for that candidate are transferred, according to the second preferences, to the other candidates. This is repeated until a candidate has an absolute majority. That candidate is then declared elected.

The optional preferential proportional representation method is used in the Legislative Council with the whole State as a single electorate. A voter is required to vote for ten candidates but may indicate preferences beyond ten.

POLLING DAY

At general elections, polling is held on the same day for all electorates. Polling day is invariably a Saturday. The Polls are open from 8.00 a.m. to 6.00 p.m.

LOCAL GOVERNMENT AUTHORITIES

Since 1 July 1993, an area established for local government purposes is known as a Council. A Council may be proclaimed a City Council if it has a distinct character and entity as a centre of population. At 1 July 1993 there were 39 city councils and 138 councils in NSW. In addition, there is one unincorporated area in the far west of NSW.

Each local government area is governed by an elected council. Each council has an elected Mayor (Lord Mayor in Sydney, Newcastle and Wollongong) and a General Manager appointed by the council.

LOCAL GOVERNMENT ACT

The Local Government Act 1993 came into effect on 1 July 1993 and replaced the Local Government Act 1919. The new Act abolished the separate funds which had been established to record transactions for general functions and trading activities of councils, and replaced it with one fund. Another significant effect is the requirement for councils to value their infrastructure, such as roads and recreation amenities, and to bring these assets into the councils' balance sheets.

With the introduction of the new Act, the elected representatives of councils are known as councillors (instead of aldermen in the case of municipalities) and all leaders of councils are called mayors (instead of presidents in the case of shires).

LOCAL GOVERNMENT FUNCTIONS

Local government councils in NSW provide a wide range of services. The most important of these are the general services of administration, health, community amenities, recreation and culture, roads and debt servicing throughout the area controlled by the council. Councils also provide a range of trading activities, mainly in country areas of NSW. These trading activities include water supply, sewerage services, gas services and abattoir facilities.

Local government's principal functions are to maintain public roads, operate garbage disposal services, run health services, provide recreation services, control building construction, and provide sundry other services of benefit to the local population.

County councils are constituted for the administration of specified local services of common benefit in districts which comprise a number of councils. County councils' responsibilities can include the supply of water, flood control and eradication of noxious weeds and pests.

Text for the section entitled **The history of government in NSW** courtesy of the Parliament of New South Wales.

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